

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH

ANDY BUXTON,

Plaintiff,

vs.

OFFICER FRED HILL, OFFICER BRETT
EBBITT, OFFICER STEINER,
INDIVIDUALLY AND IN THEIR
OFFICIAL CAPACITIES;

Defendants,

2:15-CV-00646-JFC

MEMORANDUM OPINION

CONTI, Chief District Judge

The present action was filed with this court on May 19, 2015. The case was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1) and Local Rules of Court 72.C and 72.D.

Officers Michaels Brett Ebbitt, Michael Steiner and Fred Hill filed motions to dismiss the complaint filed by plaintiff Andy Buxton (“Plaintiff”) for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF Nos. 27 & 33. The magistrate judge’s Report and Recommendation filed June 23, 2016, recommended that the motions to dismiss be granted and Plaintiff’s complaint be dismissed with prejudice. ECF No. 39. Service of the Report and Recommendation was made on all parties. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule of Court 72.D.2 they had until July 5, 2016 to file any objections. Plaintiff filed a Motion for Reconsideration of the Report and Recommendation on July 5, 2016, which will be deemed to be timely filed objections to the Report and Recommendation. ECF No. 40. In the objections, plaintiff reargues what he stated in his brief in opposition to the motion to dismiss (ECF No. 37). Specifically he argues that he set forth extraordinary circumstances to support tolling of the statute of

limitations. As the magistrate judge correctly noted Plaintiff's claims are barred by the statute of limitations on the face of the complaint. The magistrate judge is also correct that the reasons Plaintiff set forth do not provide a basis for equitable tolling (ECF No. 39 at 7). After a review of the objections the court must conclude that they are without merit and the motions to dismiss will be granted with prejudice.

An appropriate order follows.

BY THE COURT,

Date: July 22, 2016

/s/ Joy Flowers Conti
Joy Flowers Conti
Chief United States District Court Judge

cc: The Honorable Cynthia Reed Eddy
United States District Court
Western District of Pennsylvania

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